IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE NINETEENTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO.14829 of 2002

Between:

The Vipparla Gram Panchayath, Vipparla, Rompicherla Mandal, Guntur District, Rep.by its Sarpanch Smt.Akula Padma, W/o.Kalayya.

...PETITIONER

AND

1. The District Collector, Guntur District, Guntur.
2. The Assistant Director of Fisheries Department of Fisheries, Guntur.
3. The Divisional Panchayath Officer, Narasaraopet, Guntur District.
4. The President, Vipparla East Tank Water User Association, Vipparla, Guntur District.
5. The FCS Ltd., Narasaraopet, Guntur District, rep.by its Secretary, Chalamcharla Mastan Rao.

(R5 is impleaded as per Court Order dated 22.07.2004 in WPMP.No.14455 of 2004)

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ of Mandamus or any other appropriate writ, order or direction declaring

the action of the respondents 1 and 2 in interfering with the right of the Petitioner Gram Panchayath in leasing out the minor irrigation tank i.e. Vipparla East Tank situated in Vipparla Village, Rompicherla Mandal, Guntur District without any manner of right, power or authority as illegal, arbitrary and unconstitutional.

Counsel for the Petitioner: MR.K.CHIDAMBARAM

Counsel for the Respondents: GP FOR ANIMAL HUSBANDARY

The Court made the following:

THE HON'BLE SRI JUSTICE B. PRAKASH RAO

WRIT PETITION NO. 14829 OF 2002

ORDER;

Heard Sri K.Chidambaram, the learned counsel appearing for the petitioner and the learned Government Pleader for Revenue appearing on behalf of the respondents 1 to 3 and Ms. Vidyavathi, the learned counsel appearing on behalf of the fifth respondent.

The petitioner, which is a Grama Panchayat, filed this Writ Petition, *inter alia,* seeking for a Writ of Mandamus to declare the action of the respondents 1 and 2 in interfering with the right of the petitioner-Grama Panchayat in seeking to lease out the minor irrigation tank i.e., Vipparla East Tank situated in Vipparla Village in Guntur District as illegal and bad.

The case of the petitioner, in brief, is that there is a minor irrigation tank known as Vipparla East Tank situated Vipparla Village in an extent of Acs.168.00 as on 12.06.1997 which was being leased out by the petitioner by way of a public auction.

As per Section 80(1) of the A.P. Panchayat Raj Act (for short 'the Act'), the said minor irrigation tank vests with the petitioner and as per sub section (2) of Section 80 of the Act, the petitioner has fishery right in the said tank. Further, as per clause (b) of sub section (1) of Section 56 r/w G.O. Ms.No.343, dated 10.04.1978, it is the petitioner who has got right to auction the weeds and reeds in the said tank and also enjoy the usufruct thereof. Further, the respondents 1 and 2 are now interfering with the petitioner's exclusive right to lease out the said tank and as a result of which, the petitioner is deprived of its legitimate income for the last two years. Further, it is also pointed out that fisheries Department has absolutely no right in respect of the said tank. Hence, the Writ Petition.

Contesting the claim of the petitioner, the case of the respondents 1 to 3 is to the effect that the said tank does not vest with the Grama Panchayat but it is under the control of Minor Irrigation Department as notified in the Gazette Notification, Guntur District dated 12.05.1997 by the Minor Irrigation Department whereunder the ayacut area covered about Acs.168.00. Therefore, as per G.O.Ms.No.228, Irrigation (IRR.VI), Department, dated 27.06.1993, any tank within the area of 100 acres and above vests with the Minor Irrigation Department and not with the Grama Panchayat. Therefore, the question of any claim by the petitioner-Grama Panchayat over the said tank or leasing out the tank does not arise. It is pointed out that no-doubt for some time the petitioner has been leasing out the said tank, however, soon after the receipt of the aforesaid Gazette Notification dated 12.05.1997, it is the Fisheries Department which is now seeking to lease out the rights. Even as per G.O.Ms.No.776 F & A (Fish.II), Department dated 31.12.1990, it is stated that the

said tank only vests with the Fisheries Department and not with the Grama Panchayat. Hence, the Writ Petition is liable to be dismissed.

The fifth respondent, which was impleaded at a later stage, filed the affidavit denying the petitioner's exclusive rights and claiming that it is only the Fisheries Department as per G.O.Ms.No.776 F&A (Fish.II) Department, dated 31.12.1990 has got right to lease out the said tank. Further, the fifth respondent is a registered Society with 241 members covering 62 villages under 3 Mandals. It is pointed out that the second respondent already issued lease orders in favour of the Society to the tanks 15 in number as per the proceedings vide Ex.p. Memo No.994-C/2000, dated 22.01.2001 fixing the upset price for three faslis. Out of the said 15 tanks, Vipparla tank is one of them for which the lease amount was fixed for the faslis 1410, 1411 and 1412 for a sum of Rs.5,35,000/-, Rs.59,000/- and Rs.65,000/- respectively. Therefore, the said Society is entitled to carry on the fishing rights and the Grama Panchayat has absolutely no right.

Initially, this Court granted interim directions on 14.08.2002 restraining the respondents 1 and 2 from interfering with the right of the petitioner-Grama Panchayat in leasing out the said tank. On filing of the necessary affidavits and the application for vacating stay, the matter was heard finally at the instance of the parties.

Having heard the counsel on either side and on perusal of the material, the only question which remains to be considered is as to whether on the facts and circumstances, the tank in question belongs to the petitioner-Grama Panchayat or vests with the Fisheries Department ?

The main claim of the petitioner rests on the fact that the said tank is originally vested with the Grama Panchayat, which has been leasing out the rights of the tank whereas the respondents have no valid reason for interfering with the same.

In defence, it is stated that as per the Gazette Notification of the District Gazette, Guntur dated 12.06.1997, the said tank is under the control of the Minor Irrigation Department which has got an ayacut area of Acs.168.00. It is further stated that as per G.O.Ms.No.228, dated 27.06.1983 any tank has got Acs.100 and above vests only with the Minor Irrigation Department but not with the Grama Panchayat. A reference is also made in regard to the G.O.Ms. No.776, dated 31.12.1990 and also other various orders mentioned. Even the said G.O.Ms.No.776 does not speak anything about the vesting of any individual tanks as such, but it contemplates that the tanks which are under the control of the Grama Panchayat continued to remain. However, in this case as contended by the respondents, as per the Notification dated 12.05.1997 Vipparla tank is vested with the Minor Irrigation Department and consequently the petitioner-Grama Panchayat even if it is stated that the said tank is under the control earlier loses the same and it vests with the Minor Irrigation Department. Even otherwise the outer limit of the ayacut area as prescribed under G.O.Ms.No.228, dated 27.06.1983 also goes beyond the prescribed norms. There is no serious denial on the part of the petitioner herein in regard to the notification dated 12.05.1997 or even the conditions as prescribed under G.O.Ms.No.288, dated 27.06.1983. Having regard to the same, necessarily it follows that irrespective of the fact that whether the petitioner-Grama Panchayat leased out the rights of the tank as per the said notification dated 12.05.1997 and also the ayacut area going beyond

the prescribed area of Acs.100 and above, no longer vests with the Grama Panchayat but only vests with the Minor Irrigation Department and therefore it is the respondents 1 to 3 who have control over the same. In exercise of such rights earlier by the petitioner itself would not create any vested right to set up any such claim. There is no challenge in regard to the notification issued on 12.05.1997 or the prescribed format under G.O.Ms.No.288. dated 27.06.1983. In the circumstances, necessarily it follows that the tank in question does not vest with the petitioner and there is no enforceable right. Even-though a reference was made to the provisions under Section 80 and sub sections (1) (2) thereof read with Section 56 of the A.P. Panchayat Raj Act and also G.O.Ms.No.343, dated 10.04.1978, the same would not have any relevancy for the purpose of deciding the question since they will apply only to such which will fall within the control of the Grama Panchayat but not other-wise. Once the area of ayacut goes beyond the prescribed limit, the said provisions would not apply and the petitioner cannot make any claim and in the circumstances, the petitioner has no right to make any enforceable right of claim to seek any indulgence from this Court. Hence, I do not find any merits in the Writ Petition.

The Writ Petition is accordingly dismissed. No costs.

B. PRAKASH RAO, J

19th April 2005.

Chvn.

ASSISTANT REGISTRAR

//True Copy//

SECTION OFFICER

Copy to:

1. The District Collector, Guntur District, Guntur.
2. The Assistant Director of Fisheries Department of Fisheries, Guntur.
3. The Divisional Panchayath Officer, Narasaraopet, Guntur District.
4. The President, Vipparla East Tank Water User Association, Vipparla, Guntur District.
5. The FCS Ltd., Narasaraopet, Guntur District, rep.by its

Secretary, Chalamcharla Mastan Rao.

6. Two CCs to GP for Animal Husbandry, High Court Buildings, Hyderabad (OUT).
7. Two CD copies.